

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NELSON RODRIGUEZ,

Plaintiff,

-against-

HECTOR DIAZ, et al.,

Defendants.

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ORDER AFFIRMING MAGISTRATE JUDGE'S DENIAL OF
PLAINTIFF'S MOTION FOR PERMISSION TO TAKE ORAL DEPOSITIONS

McMahon, J.:

Magistrate Judge Dolinger has brought to my attention the fact that plaintiff – a prisoner who is acting pro se -- filed an appeal from the learned magistrate's August 14, 2009 order, in which he denied plaintiff "permission" to take oral depositions and directed him to address written interrogatories to defendants' counsel. The notice of appeal is addressed to the Second Circuit, but any appeal from a Magistrate Judge's order relating to discovery ought to be decided by this court, not by the Second Circuit. Rather than penalize Mr. Rodriguez for his failure to file a notice of appeal to the proper court, I am simply going to decide the appeal.

Judge Dolinger's order is indisputably correct. Plaintiff is incarcerated and the preferred method of taking discovery by an incarcerated person is written interrogatories. Additionally, neither the court nor the State has any obligation to provide a court reporter for an oral deposition, and plaintiff has not demonstrated that he has the means to hire a court reporter. Therefore, plaintiff shall proceed by written interrogatories if he wishes to address questions to any of the defendants. Plaintiff should write out his questions and send them to defendants' counsel, who will respond to them within 30 days. The deadline for taking discovery in this action is hereby extended to 30 days after plaintiff sends written interrogatories to counsel for defendants, PROVIDED that they be sent out from the facility no later than October 16, 2009.

Dated: September 28, 2009


U.S.D.J.

BY FIRST CLASS MAIL TO ALL PARTIES

BY HAND TO MAGISTRATE JUDGE DOLINGER